

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

THE BOEING COMPANY

and

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

**Cases 10-CA-204795
10-CA-226718
10-CA-227191
10-CA-229378
10-CA-229979
10-CA-231035
10-CA-231815
10-CA-231853
10-CA-231888
10-CA-232626
10-CA-233509
10-CA-234519
10-CA-245435**

ORDER¹

The Respondent's request for special permission to appeal from Administrative Law Judge Geoffrey Carter's August 4, 2020 Order directing the hearing to be conducted by videoconference is granted. On the merits, the appeal is denied.

The Respondent argues that the General Counsel has failed to submit a written application seeking a videoconference hearing in accordance with Section 102.35(c) of the Board's Rules and Regulations and that such a hearing without all of the safeguards required by that Section would deny it due process. The Board has found that the ongoing COVID-19 pandemic establishes good cause based on compelling circumstances for taking video testimony under Section 102.35(c). *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1 (2020); *Morrison Healthcare*, 369 NLRB No. 76,

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

slip op. at 1 (2020). Moreover, we have found that because Section 102.35(c) pertains to hearings in which a single witness testifies via video conference in an otherwise in-person hearing, the strictures of that Section are informative but not controlling when a hearing is conducted entirely by videoconference. *William Beaumont Hospital*, 370 NLRB No. 9, slip op. at 1; *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 1 fn. 2. A video hearing can also provide for the observation of witnesses for the purpose of credibility determinations, as well as adequately address other due process concerns. *EF International Language Schools, Inc.*, 363 NLRB No. 20, slip op. at 1 fn. 1 (2015), enfd. 673 Fed. Appx. 1 (D.C. Cir. 2017). Therefore, we find that the Respondent's speculative concerns are premature and may be raised with the judge in the first instance if warranted, or on exceptions to the Board pursuant to Section 102.46 of the Board's Rules and Regulations, in the event it receives an adverse ruling. Under these circumstances, we find that the Respondent has failed to demonstrate that the judge abused his discretion.²

Dated, Washington, D.C., August 31, 2020.

JOHN F. RING

CHAIRMAN

MARVIN E. KAPLAN

MEMBER

WILLIAM J. EMANUEL

MEMBER

² On August 17, the Respondent filed a statement of supplemental authority bringing *William Beaumont Hospital*, 370 NLRB No. 9 (2020), to the Board's attention. Under Board rules, statements of supplemental authority are limited to 350 words and should be submitted via letter to the Executive Secretary. *Reliant Energy*, 339 NLRB 66, 66 (2003). Respondent's statement, however, runs over 2000 words and takes the form of a legal brief. It is therefore not in compliance with the Board's requirements, and we strike it as improperly filed.